IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1540 OF 2005

R. Vijaykumar ..Petitioner

versus

Romit P. Patel & Ors. ..Respondents

Mr. M. S. Bhandari for the Petitioner.

Mr. B. G. Vaidya for the Respondent Nos. 1 and 2.

Mrs. S. D. Shinde, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, J.

DATE : 1ST AUGUST, 2006

P.C. :

1. Heard Advocate for the Petitioner, Respondent Nos. 1 and 2 and learned APP for the State. Rule. Returnable forthwith, by consent.

2. Petitioner is the complainant. He had filed complaint under Section 138 of the Negotiable Instruments Act. After some evidence was recorded, the Magistrate was transferred, some other Magistrate came into picture. In that background of

the matter, the III Adhoc Addl. Sessions Judge, Solapur, passed an order on 5.5.2005 that there has to be de novo trial because of the change of the Magistrate. The specific observations and findings in this regard are:

> "... it is necessary if the learned Judge is transferred in the midst of trial the succeeding Judge must proceed the trial afresh and pronounce the Judgment."

The III Adhoc Addl. Sessions Judge has relied upon the Judgments, all of which were under the Essential Commodities Act. Admittedly, offence under Section 138 of Negotiable Instruments Act is punishable by imprisonment of two years. Section 143 of Negotiable Instruments Act says that offence should be tried summarily. Chapter XXI of the Criminal Procedure Code is about summary trials and Section 260 provide that any of the offences mentioned from (i) to (ix) they be tried summarily. The criteria is that offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years. On the face of it, it may appear that offences under Section 138 of Negotiable

Instruments Act are also covered by this Chapter. However, sub section (2) of Section 262 prescribe for record in summary trials, clearly makes out a distinction because under sub section (2) it has been provided that no sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter. Therefore, if offences which can be tried summarily as per provisions of Chapter XXI, the power of the Magistrate is restricted to the imposition of punishment of three months only.

3. Even if Section 143 of the Negotiable Instruments Act, on the other hand prescribe that offences are triable summarily, it has not restricted the powers of the Magistrate in imposing punishment as is prescribed under Section 262 (2) of the Criminal Procedure Code. This is therefore a distinguishing feature between summary trial of offence under Chapter XXI of Criminal Procedure Code and summary trial of offence under Section 138 of the Negotiable Instruments Act.

4. In this view of the matter, impugned order dated 5.5.2005 passed by the III Adhoc Addl.

Sessions Judge, Solapur, ordering de novo trial is patently illegal, wrong and inconsistent with the provisions of law, therefore, it is quashed and set aside. Trial to proceed before the Magistrate from the stage it were before filing of the revision. Petition disposed of. Rule made absolute.

5. Counsel for the petitioner states that one more matter involving the same issue between the same parties bearing Writ petition No. 1541 of 2005 is not shown on the board, though it is tagged with Writ petition No. 1540 of 2005. Advocate for the Respondent Nos. 1 and 2 states that he has no vakalatnama in Writ petition No. 1541 of 2005. Therefore, Writ Petition No. 1541 of 2005 is separated from Writ Petition No. 1540 of 2005. Put up Writ Petition No. 1541 of 2005 after two weeks.

(D.G. DESHPANDE, J.)